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16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

18
19 MICHAEL J. ANGLEY, Individually
20 and on Behalf of All Others Similarly
Situated,

21 Plaintiff,

22 v.
23

24 UTI WORLDWIDE, INC., et al.,

25 Defendants.

Case No. 2:14-cv-02066-CBM-E

**NOTICE OF APPLICATION AND
EX PARTE APPLICATION OF
PLAINTIFF TO FILE A
CORRECTED MEMORANDUM
IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS; MEMORANDUM IN
SUPPORT**

Judge: Hon. Consuelo B. Marshall
Date: August 25, 2015
Time: 10:00 a.m.
Courtroom: 2

EX PARTE APPLICATION

Pursuant to the Federal Rules of Civil Procedure and this Court’s Local Rule 7-19, Lead Plaintiff Michael Cutler (“Plaintiff”) seeks *ex parte* relief to file a corrected Memorandum of Law in Opposition to Defendants’ Motion to Dismiss (the “Memorandum in Opposition”). This is Plaintiff’s first request to file a corrected Memorandum in Opposition. The extraordinary relief of an *ex parte* application is necessary on this issue because there is insufficient time to schedule a regularly noticed motion before the passage of the previously set deadline for Defendants’ reply in support of their Motion to Dismiss.

Defendants have advised Plaintiff that they do not take a position on this Application.

This Application is made only after providing notice to counsel for Defendants, as required by Local Rule 7-19.1, via e-mail on July 29, 2015 and July 30, 2015.

Defense counsel's information is:

Gary A. Bornstein

CRAVATH, SWAINE & MOORE LLP

825 Eighth Avenue

New York, NY 10019

Tel: (212) 474-1000

gbornstein@cravath

It is a moment of truth. A

In support of this Application, Plaintiff files herewith the accompanying Memorandum of Points and Authorities.

1 Dated: July 30, 2015

Respectfully submitted,

2 s/William B. Federman

3 William B. Federman

4 (admitted *Pro Hac Vice*)

5 A. Brooke Murphy

6 (admitted *Pro Hac Vice*)

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MEMORANDUM OF POINTS AND AUTHORITIES

On July 27, 2015, Plaintiff filed his Memorandum in Opposition to Defendants' Motion to Dismiss. (Dkt. No. 57) In an attempt to file the Memorandum in Opposition within the one week deadline while preserving relevant substantive arguments, Plaintiff's Counsel slightly altered the font sizing and spacing so that the brief would satisfy the 25-page limitation. At the time, Plaintiff's Counsel was unaware of the precise requirements of the Court's Local Rule 11-3.1.1, namely that font spacing could not be condensed. On July 28, 2015, Defendants contacted Plaintiff to advise that the font appeared to be smaller than the requirements of the Court's Local Rule 11-3.1.1. Accordingly, Plaintiff seeks an opportunity to file the corrected brief (attached hereto as Exhibit 1) ("Corrected Memorandum"), which complies with the Court's Local Rule 11-3.1.1.

Allowing Plaintiff to file the Corrected Memorandum will not prejudice Defendants since: (1) the Corrected Memorandum has made no substantive changes that altered Plaintiff's arguments; (2) Plaintiff sent a copy of the Corrected Memorandum to Defendants on July 29, 2015, prior to filing this Application; (3) Plaintiff agrees to extend the deadline for Defendants' reply brief until August 6, 2015—one week from the filing of this Application which includes the Corrected Memorandum as an attachment. Under the Court's Order (Dkt. No. 28), Defendants had until August 3, 2015—one week from Plaintiff's deadline to file a response in opposition—to file their reply brief.

For the reasons stated herein, Plaintiff respectfully requests that the Court:

- 1) Grant Plaintiff the opportunity to file the Corrected Memorandum (attached hereto as Exhibit 1); and
- 2) Extend Defendants' deadline to file their reply brief until August 6, 2015.

1 Dated: July 30, 2015

Respectfully submitted,

2 s/William B. Federman

3 William B. Federman

4 (admitted via *Pro Hac Vice*)

5 A. Brooke Murphy

6 (admitted via *Pro Hac Vice*)

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CERTIFICATE OF SERVICE

I hereby certify that this Notice was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on Thursday, July 30, 2015.

/s/ William B. Federman

William B. Federman